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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

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10 HEADHUNTER, LLC,

11 Plaintiff,

12 Case No. C17-0987-MAT

v.

13 POULLINE-JAUN CASTILLO, et al.,

14 Defendants.

15 ORDER DENYING DEFENDANT
16 CASTILLO'S MOTION TO DISMISS

17

INTRODUCTION

18 Defendant Poulline-Jaun Castillo,¹ proceeding pro se, moves to dismiss the copyright
19 infringement action brought against her by plaintiff Headhunter, LLC. (Dkt. 36.) Plaintiff opposes
20 the motion to dismiss. (Dkt. 52.) For the reasons set forth below, the Court DENIES defendant
21 Castillo's motion.

22 BACKGROUND

23 On June 30, 2017, plaintiff filed suit alleging numerous Doe defendants infringed on its
copyrighted picture, *A Family Man*, by illegally downloading the movie via peer-to-peer (P2P) or
BitTorrent file swapping networks. (Dkt. 1.) At the time of filing, plaintiff could identify the Doe

¹ Defendant states her legal name is "Poulline-Jaun C. Castillo," rather than "Paulline Castillo," as indicated in the Amended Complaint. The Clerk is directed to correct the docket with this modification to plaintiff's name.

1 defendants only by their Internet Protocol (IP) address and the date and time of alleged
2 infringement. Utilizing forensic software, with geolocation functionality, plaintiff scanned P2P
3 networks and isolated Internet Service Provider (ISP) addresses in the Western District of
4 Washington responsible for copying and distributing its motion picture. Plaintiff used that
5 information, along with corresponding hash values and transaction dates and times, to identify a
6 “swarm” of users reproducing, distributing, displaying, and/or performing the copyrighted work.

7 Not long after receipt of the complaint, the Court granted plaintiff’s motion for expedited
8 discovery from non-party ISPs. (Dkt. 8.) Plaintiff issued subpoenas, acquired the identities of
9 defendants, where available, and conducted other fact finding, including analysis of the BitTorrent
10 activity and investigation through Google address mapping and/or county records, and, in some
11 instances, investigative databases and social media sites. (*See* Dkt. 12.) Plaintiff sent letters to
12 identified individuals or their counsel requesting voluntary participation in identifying actual
13 infringers, to the extent different from the ISP subscribers, and attempted informal follow-up
14 where responses were received. (*See id.*) Plaintiff thereafter filed an amended complaint
15 identifying defendants, including Castillo, by name. (*Id.*)

16 DISCUSSION

17 In seeking dismissal, defendant Castillo denies the claims of copyright infringement,
18 asserts she did not know of or authorize any infringing activity, and maintains plaintiff filed this
19 action without sufficient evidence. (Dkt. 36.) Castillo argues plaintiff insufficiently relies on her
20 mere purchase of internet access, and does not establish the identity of the individual utilizing that
21 access to infringe on the copyright or ensure an “unidentified other did not use that access.” (*Id.*
22 at 1.) Castillo avers she took steps to identify the responsible party, including asking family
23 members, relatives, and other household visitors, reviewing electronic devices, contacting the ISP

1 to make changes to service, and changing appliances to prevent further security issues, but was
2 unable to identify the responsible party.

3 The Court construes Castillo’s motion as seeking dismissal for failure to state a claim upon
4 which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). In considering a Rule
5 12(b)(6) motion to dismiss, the Court must determine whether the complaint alleges factual
6 allegations stating a claim for relief that is ““plausible on its face.”” *Ashcroft v. Iqbal*, 556 U.S.
7 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim
8 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*,
10 550 U.S. at 556). While detailed factual allegations are not necessary, a complaint must offer
11 “more than labels and conclusions” and contain more than a “formulaic recitation of the elements
12 of a cause of action[.]” *Twombly*, 550 U.S. at 555. Dismissal is appropriate if the complaint fails
13 to state a cognizable legal theory or fails to provide sufficient facts to support a claim. *Robertson*
14 *v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984).

15 With a Rule 12(b)(6) motion, the Court accepts all facts alleged in the complaint as true,
16 and draws all inferences in the light most favorable to the non-moving party. *Barker v. Riverside*
17 *County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009). The Court is not bound to accept the
18 non-moving party’s legal conclusions. *Iqbal*, 556 U.S. at 678. The ultimate question of whether
19 a plaintiff’s allegations have merit “can be explored in discovery and, if necessary, at trial.”
20 *Bridges v. Gilbert*, 557 F.3d 541, 552 (7th Cir. 2009).

21 To state a claim for copyright infringement, a plaintiff must show “(1) ownership of a valid
22 copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publ’ns,*
23 *Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). In this case, there is no dispute plaintiff is

1 the owner of a valid copyright in the motion picture *A Family Man*. (See Dkt. 12, ¶¶5-6 and Ex.
2 A (registered copyright); *Syntek Semiconductor Co. v. Microchip Tech. Inc.*, 307 F.3d 775, 781
3 (9th Cir. 2002) (registration considered *prima facie* evidence of validity of copyright). The
4 question before the Court is whether plaintiff pleads sufficient facts to state a claim of copyright
5 infringement by Castillo. The Court, as discussed below, finds the facts alleged sufficient to state
6 a claim and to survive the motion to dismiss.

7 Plaintiff alleges ISP provider Comcast identified Castillo as the subscriber to a specific IP
8 address during the relevant time period, that Castillo's IP address was observed infringing
9 plaintiff's motion picture during that time period, and that the downloading of the motion picture
10 was part of a significant BitTorrent activity associated with Castillo's and others' IP addresses,
11 rather than an isolated instance of infringement. (Dkt. 12, at ¶¶ 10, 12, 18.) Plaintiff alleges the
12 volume, titles, and persistent BitTorrent activity associated with the IP addresses of the defendants
13 indicated they were either the primary subscriber or someone residing with the primary subscriber
14 and an authorized user, and not a transitory or occasional guest, and that, given the typical capacity
15 of residential data services, any user would likely have been aware of at least some of the infringing
16 activity through general service slowdown. (*Id.*, ¶12.) Plaintiff alleges the materials shared and
17 downloaded would not be of interest to a child, and that the physical location and layout of
18 Castillo's residence make it unlikely the IP address was hijacked by someone outside the residence.
19 (*Id.*, ¶¶ 12, 14.)

20 Contrary to Castillo's contention, the amended complaint relies on far more than the mere
21 fact she was assigned and paid for a particular IP address associated with infringing activity. As
22 found in similar cases filed in this district, the Court finds the amended complaint to set forth a
23 facially plausible claim of copyright infringement by Castillo. *See, e.g., Criminal Prod., Inc. v.*

1 Winter, C16-1351-RAJ; C16-1647-RAJ (Dkt. 36) (W.D. Wash. Jun. 29, 2017) (motion to dismiss
2 denied where plaintiff alleged IP addresses observed infringing a copyrighted motion picture on a
3 certain date and for other periods of time, the physical make-up and layout of residences and ISP
4 security measures made it unlikely the IP addresses had been hijacked, and the infringing activity
5 was not an isolated incident and would have diminished the bandwidth of internet connections
6 such that plaintiffs would likely have been aware of the activity); *QOTD Film Invest., Ltd. v. Does*
7 *1-14*, C16-0371-RSL (Dkt. 70) (W.D. Wash. Oct. 11, 2016) (motion to dismiss denied where
8 plaintiff was subscriber to a specific IP address observed to have infringed on plaintiff's motion
9 picture during the relevant time period, the download was not an isolated infringement and was
10 one instance of significant BitTorrent activity, the material would not be of interest to a child, the
11 physical location and layout of the residence made it unlikely the IP address was hijacked, and the
12 use of the IP address for the activity was extensive enough that an inference of knowledge and
13 permission arose). *Cf. LHF Prod., Inc. v. Doe 1*, C16-1273-RSM (Dkt. 53) (W.D. Wash. Feb. 23,
14 2017) (granting unopposed motion to dismiss where plaintiff relied solely on the assignment of a
15 particular IP address to assert personal involvement in BitTorrent swarm).

16 Castillo's denial of liability is not properly considered at this stage of the proceedings. The
17 Court is not required "at the motion-to-dismiss stage to consider whether the factual allegations
18 are probably true." *Iqbal*, 556 U.S. at 696 (citing *Twombly*, 550 U.S. at 555). The Court must, on
19 the contrary, take the allegations as true. *Id.* Nor is dismissal warranted based on Castillo's
20 contention plaintiff failed to sufficiently exclude the possibility another individual engaged in the
21 infringing activity. Plaintiff's allegations, as described above, suffice to set forth "more than a
22 sheer possibility" Castillo engaged in the infringing activity. *Id.* at 678 ("The plausibility standard
23 is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a

1 defendant has acted unlawfully.”) (quoting *Twombly*, 550 U.S. at 556). Plaintiff, moreover, alleges
2 both direct and, alternatively, indirect infringement. (Dkt. 12, ¶12.) The facts alleged suffice to
3 give rise to a reasonable inference Castillo would have, at the least, been aware of infringing
4 activities or materially contributed to those activities by providing the internet access. *QOTD Film*
5 *Invest., Ltd*, No. C16-0371-RSL (Dkt. 70 at 4). Discovery will allow for factual development as
6 to Castillo’s liability, including whether she directly engaged in copyright infringement or was on
7 notice of and can be held responsible for another individual’s infringing activity.² There is, for
8 this reason and for the reasons stated above, no basis for dismissing plaintiff’s claims of copyright
9 infringement against Castillo.

CONCLUSION

11 Defendant Castillo's motion to dismiss (Dkt. 36) is DENIED. The Clerk is directed to send
12 a copy of this Order to the parties.

DATED this 9th day of January, 2018.

Mary Alice Theiler
Mary Alice Theiler
United States Magistrate Judge

22 ² Discovery will also allow for consideration of the efforts described by plaintiff to identify the
23 infringing party. Plaintiff states that, if true, Castillo did not provide information regarding such efforts, or
provide that information in a verified form. Castillo did not submit a reply addressing this or any other
arguments or assertions in plaintiff's opposition.